

November 8, 2012

VIA ELECTRONIC FILING

Marlene Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington, D.C. 20554

Re: *Notice of Ex Parte Communication, 2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 09-182; Promoting Diversification of Ownership in the Broadcasting Services, MB Docket No. 07-294*

Dear Ms. Dortch:

On Nov. 6, 2012, Kenneth Satten and the undersigned, representing Bonneville International Corporation and The Scranton Times, L.P. (“Bonneville/Scranton”), spoke via telephone with Dave Grimaldi, Chief of Staff and Media Legal Advisor to Commissioner Mignon Clyburn, concerning the above-referenced proceeding (“2010 Quadrennial Review”). The purpose of the call was to demonstrate how the Commission’s precedent, its current rulemaking record, and pursuit of its articulated policy goals support elimination of the FCC’s newspaper/radio cross-ownership rule.

Specifically, we discussed the consistency of the Commission’s pronouncements over 42 years concerning the limited role that radio plays in original newsgathering and dissemination, particularly with respect to local news. *See* Comments of Bonneville/Scranton, MB Docket No. 09-182, at 5-10 (March 5, 2012) (“Bonneville/Scranton Comments”). We pointed out that a number of commenters in addition to Bonneville/Scranton also have submitted serious, analytical arguments for lifting the newspaper/radio rule, while the record is devoid of empirical evidence or opposition that would buttress retention of the regulation. In addition, we explained that the rule serves none of the long-standing policy goals that purportedly have served to justify the FCC’s broadcast ownership restrictions – competition, localism, and diversity. Bonneville/Scranton Comments at 14-20.

We observed that the Diversity and Competition Supporters (“DCS”), a coalition of 50 prominent associations and organizations that collectively represent a wide range of minorities’ and women’s interests, now supports relaxation of the entire newspaper/broadcast cross-

November 8, 2012

Page 2

ownership ban because of the “current climate facing the newspaper industry,” so long as the rule change does not discourage minority ownership. *See* DCS Comments, MB Docket No. 09-182, at 40, 42-43 (March 5, 2012). DCS goes on to state that “in practice, ... cross-ownership appears to have little impact on minority ownership” but that it can “help underwrite original journalism.” *Id.* at 41. We also noted that Bonneville/Scranton supports the Commission’s ongoing efforts to help increase diversity among station owners. We urged that the FCC move forward with these efforts while also working on a parallel track to complete the 2010 Quadrennial Review proceeding. In particular, we suggested that the Commission give serious consideration to several proposals advanced by DCS, including the concept of an incubator program.

We also discussed recent analytical reports concerning the continuing transformational upheaval confronting daily newspapers in the digital era, regardless the newspaper’s size, geographic location, or financial underpinnings.¹ With respect to certain specific proposals for potential changes to the newspaper/broadcast cross-ownership rule generally, we explained the factual inconsistencies that would plague any effort to establish a “top 20 market” threshold for granting newspaper/radio regulatory relief. *See* Bonneville/Scranton Comments at 22-24.

Finally, we pointed out that the Commission has been presented with no factual foundation, or even serious legal argument, for keeping the newspaper/radio restriction. As a result, given the current record before the agency, a decision to keep a newspaper/radio rule in any form would violate Section 202(h) of the Telecommunications Act of 1996, run counter to the Administrative Procedure Act’s prohibition against arbitrary and capricious agency action, and suffer from serious constitutional infirmities. *See id.* at 9 n.19; *see also id.* at 18 n.55.

¹ *See, e.g.,* Alan Mutter, “The incredible shrinking newspaper audience,” Reflections of a Newsosaur, Oct. 15, 2012, <http://newsosaur.blogspot.com/2012/10/the-incredible-shrinking-newspaper.html> (analysis linking to recent Pew Research Center studies concerning consumer use of local news sources and development of mobile news and a New York Times research study concerning the aging audience for traditional newspapers); Ken Doctor, “The newsonomics of Advance’s New Orleans strategy,” Nieman Journalism Lab, Oct. 4, 2012, <http://www.niemanlab.org/2012/10/the-newsonomics-of-advances-new-orleans-strategy/> (analyzing the financial implications of newspaper cutbacks on print publication); “More Declines Predicted for Newspapers” MediaDailyNews, Sept. 27, 2012, <http://www.mediapost.com/publications/article/184002/more-declines-predicted-for-newspapers.html#ixzz291tdywJo>; Christopher Zara, “Newspaper Industry Shrinks 40 Percent In A Decade: Report,” International Business Times, Sept. 20, 2012, <http://www.ibtimes.com/print/newspaper-industry-shrinks-40-percent-decade-report-793706>.

WILKINSON) BARKER) KNAUER) LLP

November 8, 2012

Page 3

In accordance with the Commission's *ex parte* rules, 47 C.F.R. § 1.1206, this notice is being filed in the above-referenced dockets. If you have any questions about this submission, please do not hesitate to contact me.

Respectfully submitted,

/s/ Rosemary C. Harold

Rosemary C. Harold
Wilkinson Barker Knauer, LLP
2300 N Street, N.W, Suite 700
Washington, D.C. 20037
(202) 383-3371

*Counsel for Bonneville International
Corporation and The Scranton Times, L.P.*

cc: Dave Grimaldi